

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SANDRA E. FLUCK, an individual,)	
)	C.A. No. 06-188
Plaintiff,)	
v.)	
)	
)	
HOENEN & MITCHELL, INC., a Delaware corporation, BELLA VISTA DEVELOPMENT, LLC, a Virginia corporation, BELLA VISTA TOWNHOME CONDOMINIUM ASSOCIATION, INC., a Delaware Corporation, RE/MAX REALTY GROUP, a Delaware franchise, WILLIAM J. MITCHELL, individually, and WAYNE MITCHELL, individually,)	JURY TRIAL DEMANDED
)	
Defendants.)	

TRIAL BRIEF OF BELLA VISTA DEVELOPMENT, LLC

It is the position of Bella Vista that it was not negligent in any manner causing plaintiff's injuries and that the plaintiff herself was negligent in failing to maintain a proper lookout for her own safety. *Greybeal v. Conley*, 353 A2d 205 (Del. 1976); *Mandio v. Carlo*, 277 A2d 508 (Del. Super 1971)

The porch and intermediate step where the plaintiff fell were built in accordance with plans and specifications approved by Sussex County. Further, the steps were inspected by the building inspector of Sussex County and found to comply with building codes. Thus, there was no defect on the defendant's property. *Thompson v. Cooles*, 180 A5 22 (Del. Super 1935)

Plaintiff's expert relies upon the wrong building code. The proper building code in effect at that time was the Southern States Code which had been approved by Sussex County Council. The building inspector, Charles Wheatley, had extensive experience in inspections using the code and concluded that the steps were properly constructed.

The plaintiff's fall had nothing to do with the construction of the step but occurred because she was not maintaining a proper lookout for her own safety. In stead of stepping on the intermediate step the plaintiff stepped to the side of the step. It is undisputed that she was not maintaining a lookout for her own safety.

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DATED: September 19, 2007

CERTIFICATE OF SERVICE

I, Stephen P. Casarino, Esq., hereby certify that I have efiled at 800 North King Street, Suite 200, Wilmington, DE 19801, on this 20th day of September, 2007, a true and correct copy of Bella Vista Development, LLC and Wayne Mitchell Trial Brief addressed to:

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